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Letter dated 25 January 2007 from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, I have the honour to transmit herewith the interim report of the Group of Experts on the Democratic Republic of the Congo, pursuant to Security Council resolution 1698 (2006) (see annex).

I would be grateful if the present letter and its annex could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Jorge **Voto-Bernales**
Chairman

06-63035 (E) 081206 290107

Annex

Letter dated 27 November 2006 from the Group of Experts on the Democratic Republic of the Congo addressed to the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004)

The members of the Group of Experts on the Democratic Republic of the Congo have the honour to transmit herewith the interim report of the Group, pursuant to Security Council resolution 1698 (2006).

(*Signed*) Ibra Déguène **Ka**
Chairman

(*Signed*) Enrico **Carisch**

(*Signed*) Abdoulaye **Cissoko**

(*Signed*) David **Huxford**

Interim report of the Group of Experts on the Democratic Republic of the Congo, pursuant to Security Council resolution 1698 (2006)

[Original: English/French]

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I. Introduction

1. By its resolution 1698 (2006), the Security Council requested the Group of Experts on the Democratic Republic of the Congo to continue fulfilling its mandate as defined in resolutions 1533 (2004), 1596 (2005) and 1649 (2005), to update regularly the Committee of the Security Council established in accordance with resolution 1533 (2004) on its work, and to include in its interim report further recommendations based on paragraphs 158 and 159 of its report dated 18 July 2006 (S/2006/525), on feasible and effective measures that the Council might impose to prevent the illegal exploitation of natural resources to finance armed groups and militias in the Eastern part of the Democratic Republic of the Congo. The Council also requested the Group of Experts to include in its interim report an assessment of the relative importance of the exploitation of natural resources to the armed groups as compared to other sources of income.

2. Recalling paragraph 13 of its resolution 1493 (2003), the Security Council strongly condemned the continued use and recruitment of children in the hostilities in the Democratic Republic of the Congo and decided that the provisions of paragraphs 13-16 of resolution 1596 (2005) should also extend to individuals recruiting or using children in armed conflicts.

3. The Security Council also requested the Secretary-General to take the necessary administrative measures as expeditiously as possible with a view to extending the mandate of the Group of Experts, as re-established by resolution 1698 (2006), for a period expiring on 31 July 2007.

4. The Group of Experts began its work on 22 August 2006 and held a preparatory meeting in Paris from 4 to 7 September 2006.

5. The present interim report is submitted in response to pressing questions relating to child soldiers and illegal armed activities and their connection with the exploitation of natural resources. It also deals with matters relating to civil aviation, customs and immigration, and financing and arms trafficking under the embargo.

6. The Group of Experts would like to thank in particular the Special Representative of the Secretary-General, William Lacy Swing, and the staff of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) in Kinshasa, Kigali and Kampala for their logistical support and their full cooperation. Finally, the Group of Experts wishes to thank the United Nations Operation in Burundi (ONUB) for the resources which it made available to the Group during its stay in Bujumbura from 20 to 28 October 2006.

A. Context

7. The Group of Experts arrived in Kinshasa on 23 September 2006, the day after the statement by the President of the Security Council deploring the violence that had erupted in Kinshasa on 20-22 August 2006 and at the same time inviting the Committee established pursuant to resolution 1533 (2004) to examine the situation in that city, if appropriate, in the context of the arms embargo imposed by resolutions 1493 (2003) and 1596 (2005) and renewed by resolution 1698 (2006).

8. The Group's arrival coincided with the signing, by representatives of the camps of the two candidates, of an *acte d'engagement* by which they undertook not

to resort to the use of arms before or after the second round of the presidential election and the provincial elections scheduled for 29 October and declared Kinshasa a weapons-free city.

9. This *acte* was preceded by another undertaking signed on 4 September 2006 on the management of the media by the two camps to discourage incitements to violence or hatred before, during and after the electoral campaign.

10. On 28 and 29 October 2006 a joint appeal and a declaration of the post-electoral intentions of the two candidates were signed by representatives of the two camps.

11. These documents, which serve as confidence-building measures in the military, security, media and political domains, should, if properly implemented, help quell this armed conflict and propitiate the peaceful reconstruction of a country with immense potential.

12. Notwithstanding all these confidence-building measures and the support of the international community (MONUC, EUFOR), however, the situation remains volatile in Kinshasa, as demonstrated by recent events where gunmen were able to sow terror in a supposedly weapons-free city.

13. As indicated in the statement of 22 September 2006 by the President of the Security Council (see para. 7 above), the Group remains concerned about the situation in Kinshasa. Despite the continuing tension and the illegal armed activities in Kinshasa, there is insufficient evidence of violation of the embargo for the Group of Experts to make a case for the imposition of sanctions. Rumours were fuelled and tension heightened in Kinshasa by several authorized arms deliveries which arrived in the city during the elections.

14. This was the climate of political tension that prevailed during the visit to Kinshasa by the Group of Experts.

15. The publication on 15 November 2006 of the provisional results of the second round of the presidential election, three days before the present interim report was drafted, confirmed the victory of President Joseph Kabila.

B. Summary of findings

16. The links between the activities of armed groups and natural resource exploitation during the conflicts in the Democratic Republic of the Congo have been widely discussed in previous United Nations reports. The Group of Experts examined recent changes in the interaction between armed activities and natural resource exploitation at the end of the transition period and considered whether there are fundamental differences between past and current practices.

17. This research shows that although linkages still exist, the current situation cannot be viewed solely through the lens of the activities of structured armed groups but incorporates a wider and more complex problem involving State actors, criminality, corruption and other illicit armed activity. The Group's consultations with a broad range of stakeholders suggest that these problems are best addressed by promoting law-abiding industries and responsible Government oversight. As an interim measure the Security Council can help by imposing financial and travel sanctions against those actors who violate Congolese laws.

II. Response to paragraph 6 of Security Council resolution 1698 (2006)

A. Natural resource exploitation and armed activities

18. In Ituri and the Kivus there has been a clear geographical correlation between the activities of illicit armed actors and areas of natural resource exploitation. Control over territory has proven to be the key factor enabling armed groups in the Democratic Republic of the Congo to profit from the exploitation of natural resources.

19. Internal documentation of the Front des nationalistes et intégrationnistes-Front de résistance patriotique de l'Ituri (FNI-FRPI) obtained by the Group of Experts during the mandate of Security Council resolution 1616 (2005) demonstrated the predominance of the gold mining sector as this group's main source of income. This income was derived both directly from gold and from multiple forms of taxation on the local community, which itself depended on gold exploitation as its main source of income. Although quantifiable data are not available for other remaining armed groups operating in the Democratic Republic of the Congo, evidence of this parasitic system is reported throughout the eastern part of the country in areas where armed groups still retain territorial control.

20. The Armed Forces of the Democratic Republic of the Congo (FARDC) now have control over many of those areas where natural resource exploitation is taking place. In terms of taxation, theft and abuses of the small-scale mining community, there are striking similarities between the illicit activities of the 85th Brigade related to cassiterite (tin oxide) production in Walikale and gold production controlled by FNI-FRPI in Mongbwalu.

Case study

Cassiterite (tin oxide) production in Walikale

At the Bisie mine in Walikale, cassiterite (tin oxide) is extracted through small-scale mining operations. This product is then transported by porters on foot and then by motorbike through the forest to the main road, where it is traded, consolidated into 2,000-kg loads and brought out by aeroplane to Goma. This trade is relatively easy to monitor as access to Walikale until very recently has been exclusively by air. Information given by the aircraft operating companies, pilots, cargo handling agents, and records at Walikale airstrip suggest a minimum of 9 to 10 aircraft rotations per day, each transporting 2,000-kg of cassiterite (tin oxide). This suggests that the extracted cassiterite (tin oxide) is worth $800,000 per month to the local economy.

The legitimate concessionaire, Mining Processing Congo (MPC), recently suspended its planned exploration activities because of security concerns for its staff. MPC reports having experienced serious harassment and security problems. The company has provided evidence that its staff have been subjected to arbitrary detention, threats, attempts to prevent access to their concession and armed attack.

Control inside, and access to, the mine is provided by the non-integrated 85th Brigade of FARDC. Illegal taxation, theft and other forms of extortion are perpetrated daily by members of this Brigade against those miners and porters working in the cassiterite (tin oxide) trade and the subsidiary commerce which has grown up around this natural resource exploitation.

In addition to the innumerable daily abuses of those involved in the mining sector by members of the 85th Brigade, just in the two-week period when the Group of Experts was investigating in this area, three serious security incidents were reported involving illicit activities by armed actors:

- On 11 November 2006, there was an exchange of fire lasting up to an hour between two units of the 85th Brigade which had come into conflict over the mine.
- On 9 November 2006, an aircraft operated by Goma Express overloaded with cassiterite (tin oxide) crash-landed on the main road north of Walikale, destroying houses and vehicles, killing one person and injuring others. Apart from the two pilots, there was one passenger on board the aircraft who was travelling under an arrangement between Goma Express and the 85th Brigade that allows one passenger designated by the military to be carried free of charge on all flights to and from the mining area.
- On 29 October 2006, a delegation from the legal concessionaires, MPC, arrived at the mine and was attacked by illicit armed actors who fired at the delegation multiple times with AK-47s, hitting and seriously injuring one member and closely missing the others.

21. Immediate responsibility for illicit armed activities in the natural resource trade in Bisie lies with the 85th Brigade commander. Ultimate responsibility, however, lies further up the chain of command. It is illogical and ineffective for FARDC soldiers who are paid at best less than a dollar a day to be given responsibility for the security of an area of natural resource exploitation worth $800,000 per month to the local economy. The complexities of working with large numbers of small-scale miners demand an array of security skills that FARDC has not been trained for. Even if integrated units were to be deployed in this area these fundamental problems would remain.

22. The plane crash referred to in the case study above also highlights the responsibility of the State to ensure air traffic safety. In terms both of its siting and its function, of which the authorities were all aware, the Walikale landing strip — a section of main road in the town — does not comply with the easement rules. In addition, the Civil Aviation Authority sent a circular No. 416/DAC/TC/SEC/370/2003 dated 2 May 2003 to all aviation companies operating in the Democratic Republic of the Congo, notifying them that it was prohibited to carry passengers and cargo in the same compartment. The plane which crash-landed had on board 2,000 kg of cassiterite, when it should only have been carrying 1,400 kg, and it also had passengers in the same compartment. From the

outset no one checked that the rules were being followed, which it was the responsibility of the State to do.

B. Security threats to the natural resource sector

23. A wide range of security threats and risks were brought to the attention of the Group of Experts in its consultations on paragraph 6 of Security Council resolution 1698 (2006) with leading industrial companies in the Democratic Republic of the Congo. Only one industrial mining company, however, mentioned having had a security problem with an armed group, and it was not a recent occurrence. The main problems consistently cited by the companies concern the lack of capacity of the authorities of the Democratic Republic of the Congo to secure their investment, a lack of transparency in conducting business activities, and extortion attempts made by a range of State actors from low-level military personnel up to a Government minister. Over half the industrial mining companies contacted by the Group have either already experienced or anticipate problems that need to be addressed concerning the activities of artisanal and small-scale miners. The more enlightened companies are addressing these points of potential friction in advance in attempts to avert security problems. However, these same companies have cited further concerns about incapacity of State authorities and security forces to deal with these issues with the necessary skills, resources and sensitivity to the needs of artisanal and small-scale mining communities.

24. The paucity of responsible State behaviour and the ongoing militarization of natural resource exploitation have wider security ramifications which include, but are not limited to, the ongoing activities of armed groups in the territory they control. The natural resource sector, if it can encourage responsible investment and management, has the potential to produce vast developmental and security benefits, a potential that is currently unfulfilled in much of the country.

25. Responsible behaviour on the part of the extractive industries is necessary to prevent abuse of the natural resources and population of the Democratic Republic of the Congo. In parallel with this, the Government has a responsibility to secure the extractive industry so that it can operate and invest in the Democratic Republic of the Congo and benefit its population. At the moment, both industrial investment and small-scale mining activities in the natural resource sector are able to progress faster than the capacity of the Government to effectively secure them. It is in this vacuum that illicit armed activities thrive.

C. Paragraph 6 consultation process

1. Cooperation of stakeholders

26. In response to requests contained in paragraph 6 of Security Council resolution 1698 (2006), the Group of Experts contacted a broad range of stakeholders individually by telephone, by correspondence and in some instances by meeting in person. An extensive questionnaire supported by detailed background notes was sent to most stakeholders.

(a) Non-responders

27. The Transitional Government of the Democratic Republic of the Congo and its ministries with primary responsibility for the nation's natural resources did not respond to the various requests presented by the Group of Experts in writing and during meetings, nor did the authorities with responsibility to provide police, internal security and military services to the extractive industries. These authorities also ignored the requests contained in paragraphs 10 and 11 of resolution 1698 (2006).

28. None of the parastatal companies of the Democratic Republic of the Congo responded.

29. No neighbouring States of the Democratic Republic of the Congo have replied to the Group's requests. These States were made aware in writing of the need for consultations, were asked a number of specific questions and were reminded of the request contained in paragraph 11 of resolution 1698 (2006).

30. The Group of Experts invited the World Bank to comment on paragraph 6. This is the most recent occasion on which the World Bank has been contacted by the Group and has responded only on the most insubstantial level.

(b) Responders

31. Substantial answers, and assistance in bringing private sector actors to the attention of the Group or encouraging them to reply to the Group's questionnaires, were provided by some States where significant private sector actors are domiciled or by States that have expressed an interest in supporting the exploration and possibly the development of a natural resource control system.

32. The Group of Experts sent an extensive background note and questionnaire to 27 of the most significant members of the extractive industries, including mining, forestry and petroleum companies and to 10 companies offering services such as assaying, quality control, transportation and security services to the extractive industries.

33. Most major companies, and their leading industry associations, participated readily in the consultations, often providing extensive answers and in many cases offering continued support to any further efforts the Security Council or the Committee might undertake.

2. Issues raised

34. The questions were grouped into the following clusters:

- General information on concessions granted, types of natural resources produced, size and remuneration of Congolese staff and projected expansions of existing operations and investments
- Security threats, provisions to counteract them and issues arising in connection with government authorities
- Views on the measures the Security Council might best adopt to prevent the diversion of natural resources

- Views with regard to the recommendations contained in paragraph 158 of the latest report of the Group of Experts (S/2006/525)
- Willingness to contribute to the research and development of the proposed natural resource control systems
- Details related to the future application within a sanctions regime of the proposed control system, if implemented
- Opinion on the measures proposed in paragraph 159 of document S/2006/525.

3. Answers received

(a) Positions regarding the recommendation contained in paragraph 158 of document S/2006/525

35. The majority of the respondents agreed that the lack of active participation in a natural resource control system, if and when introduced and functional, would represent a suitable benchmark that the international community might use to determine the subjects against whom targeted sanctions might be imposed.

36. Opinion was divided over the issue whether a system should be developed by the private sector, or whether the endeavour should result from a public-private partnership. According to most respondents, the pragmatic solution to this difference of views is that legitimacy is added by strong State involvement. Consequently, there is broad agreement that the sovereignty of the Government of the Democratic Republic of the Congo must be respected, and that the ultimate authority over such a system must rest with the State. There is also agreement that the international community should provide initial funding for the development of such a system and maintain a monitoring role. As companies already pay royalties, fees and taxes for natural resource exploration and exploitation it is expected that the State should meet all costs associated with operating a control system out of this income.

37. Most private sector actors agree with the concept of instituting a system designed to ascertain and certify the origin of precious minerals and forestry products. They are willing to participate in a private-public sector development committee that would take charge of gathering all relevant technical and administrative instruments necessary for the implementation of such a system. One company suggested that significant new data currently generated by exploration companies could be contributed and eventually integrated into a natural resource information database for the Democratic Republic of the Congo.

38. The respondents also agreed to participate in a scientific pilot study with the goal of developing enhanced technologies for the tracing of natural resources. Some companies that have already undertaken research on "fingerprinting" or similar identification methods have offered to contribute their knowledge to such a scientific fact-finding process.

(b) Points of caution

39. In their consultations with the Group of Experts, companies raised the following points of caution:

- The current capacities of the State are entirely inappropriate to administer a control system of this magnitude since the administrative skills have

deteriorated. Necessary preparatory steps would include the rebuilding of schools for administrators.

- Additional funding would be required to improve the mining cadastre's rudimentary system of registering concessions, location and technical data.
- Any new controls should be transparent, managed effectively and efficiently and not result in a further layer of bureaucracy that could inhibit development.
- Any new control system might create new opportunities for corruption.

40. The Group of Experts has observed that the Ministry of Energy's granting of petroleum concessions is non-transparent, the administrative services are in inappropriate locations and the filing system is in shambles.

(c) Positions regarding the recommendation contained in paragraph 159 of document S/2006/525

41. The concept advanced in paragraph 159 was unanimously embraced by the responding companies. One company expressed concern over the question of whether the Group of Experts would possess the necessary competence to properly interpret alleged violations against the natural resource legislation of the Democratic Republic of the Congo. Concerns were raised regarding the imposition of sanctions without a guarantee of due process. While most companies believed that there should be no exemptions if a sanctions scenario were established based on the proposed concept, some companies cautioned that it would be counterproductive to impose sanctions against artisanal communities and squatters who were exploiting natural resources on permitted concessions, because of the humanitarian consequences and an inability to enforce such sanctions.

D. Recommendations

1. General

42. No counterpart whose views were solicited by the Group of Experts thought it advisable to sanction the importation of specific commodities originating in the Democratic Republic of the Congo. Objections were raised concerning:

(a) The inability to enforce such sanctions;

(b) The risk of increasing the price of the sanctioned commodity and thus rewarding the embargo buster;

(c) Probable economic effects, variously described as "serious" or "probably leading to a new civil war"; and

(d) The negative repercussion on the nascent investment climate in the country.

43. It is clear that the imposition of commodity sanctions would symbolize very powerfully the international community's lack of confidence in the Congolese authorities' ability to prevent diversions of the State's natural resources towards the financing of illegal armed activities. Depending on which sanctions were imposed, the detrimental effects could be entirely symbolic rather than having material impacts on the population or the economic development of the country.

2. The case for selective commodity sanctions

44. The Group of Experts does not agree completely with the above-cited objections to commodity sanctions. Depending on which commodity were embargoed, the measure could very well be enforced if appropriate provisions were taken into account. Many natural resources are refined or are transported by air. Utilizing refineries or airports as natural bottlenecks, controls could be imposed that would at least make it more difficult to smuggle embargoed resources. Certain precious minerals could also be successfully sanctioned because there is only one or a few mining sites for each of these minerals in the entire country. None of the sites are legally mined, nor are there artisanal activities. The pyrochlor mine in Lueshe, North Kivu, the only one in the entire Democratic Republic of the Congo, serves as a good example because the current operator, Ngoga "Mode" Makabuza, has no legal title to the site and the Group of Experts has already identified him as a sanctions violator. Shutting down Congolese pyrochlor exports through a Security Council embargo would simply enforce what is already the situation according to Congolese law. The Group of Experts does not believe that a Congolese pyrochlor embargo would have a wider detrimental economic effect on the local population, since there is no official production and therefore no legal employment would be lost.

3. The case for petroleum sanctions

45. A similar case could be made against petroleum exploration rights that have currently been granted. There is no production or significant development involving Congolese employees, and most importantly no responsible and transparent Congolese authority managing this resource. The only loss would be the already spurious signing bonuses collected by the Ministry of Energy. Sanctioning this commodity would impose little or no costs on the Congolese population. To the extent that a well-intentioned private-sector actor might wish to assist in reforming this industry a good first step might be for the authorities of the Democratic Republic of the Congo to become a member of the Extractive Industries Transparency Initiative. Once that step is taken, the Security Council might wish to extend an exemption to a petroleum embargo for qualified and appropriate applicants.

4. Security sector reform

46. The natural resource sector demands attention so that it may be secured fully without this security disposition itself becoming a source of insecurity in the sector. This demands special training, resources and leadership for those actors given the task; furthermore, demilitarization of the natural resource sector may have to be envisaged in order for the appropriate security providers to succeed in their job. Given the sensitivities that this presents and the inherent potential for conflict in the sector, it is recommended that as a priority the Government of the Democratic Republic of the Congo organize consultations on this subject between the State authorities charged with security sector reform and their international and multilateral partners, non-governmental organizations, the mining industry and those private security firms that are already engaged with the industry.

5. Imposition of reporting obligations

47. **At this critical junction where a newly elected Government must project its authority over the entire territory of the Democratic Republic of the Congo, the Group of Experts recommends that a monthly reporting obligation be imposed on all government authorities who have oversight and monitoring obligations with respect to the nation's natural resources (minerals, timber and petroleum) and on those authorities who are supposed to implement existing United Nations sanctions. This measure is proposed for an initial period of 12 months.** This proposed obligation would require the Government of the Democratic Republic of the Congo to report to the Security Council Committee on a monthly basis:

- All efforts that are being undertaken to implement existing targeted sanctions, including identification of assets identified, or cross-border travel discovered
- All new permits for mining, timber and petroleum exploration or exploitation
- The shareholders, directors and senior managers of all existing natural resource concessionaires
- All efforts undertaken to certify the origin of natural resources and to detect diversions of proceeds from resource exploitation towards illegal armed activities
- All efforts made to secure the natural resource sector as recommended in paragraph 46 above and the results of the consultations organized on this subject.

6. Recommendations based on paragraph 158 of document S/2006/525

48. **The Group of Experts recommends that the Security Council Committee, jointly with the authorities of the Democratic Republic of the Congo, appoint members to a steering committee that will take responsibility for and oversee the formal development of all aspects that will lead to a natural resource control system.** The members of the steering committee would be expected to organize themselves and appoint a chair and a secretary. The mandate given to the committee should encompass all administrative, technical and regulatory aspects required to introduce enhanced controls for all natural resources as well as internationally recognized certification of origin schemes. Participation in the committee would be on an honorary basis, and funding for specific development tasks should be provided by interested States with contributions from the Government of the Democratic Republic of the Congo, utilizing existing proceeds from the licensing of natural resource rights. The steering committee should provide quarterly progress reports to the Security Council Committee. Members would be appointed from the following stakeholders:

- The Ministry of Mines, Ministry of Energy, Ministry of Environment, Ministry for Interior Affairs, Ministry of Defence, Ministry of Finance and Central Bank of the Democratic Republic of the Congo
- Donor States who wish to contribute start-up funding, administrative support or technical scientific know-how
- Large internationally active companies of the extractive industries

- Semi-industrial companies and cooperatives
- Artisan communities
- Refining and upgrading industries
- Assaying, inspection and audit companies
- Civil society groups.

49. To expedite and facilitate its work, the steering committee would be expected to draw as much as possible from existing certification systems and from the experiences of research organizations, companies, and reputable private-sector assayers, inspectors and auditors. One helpful example of an existing control system design was offered by Société Générale de Surveillance (see annex I to the present report). Potential contributions to the development of the steering committee, in particular those offered from the private sector, should not prejudice any possible future commercial role of the same entity as long as international standards of transparency and accountability are observed.

50. The steering committee would also be expected to benefit from workshops, seminars and other efforts that are currently being undertaken by interested States and other parties to define "best practices" for engaging in the natural resource industries of the Democratic Republic of the Congo, or for determining scientific methods of fingerprinting or source identification.

7. Recommendations based on paragraph 159 of document S/2006/525

51. Based on the unanimous agreement and input from private sector stakeholders of the natural resource industries of the Democratic Republic of the Congo, the Group of Experts reiterates and recommends expansion of the recommendation contained in paragraph 159 of its previous report (S/2006/525). Based on recent history, it is widely assumed that the newly elected Government and its monitoring and regulatory agencies will not succeed in stemming the flow of proceeds from natural resource exploitation, including funds that are extorted or obtained by corrupt means, towards illegal armed activities. Lawlessness and uncontrolled armed incursions into and exploitation of artisan communities will persist, regardless of whether armed groups are denominated as legal or illegal. Consequently, urgent intervention against all forms of illegal natural resource exploitation is required in order to encourage and promote the law-abiding extractive industries.

52. **The Group of Experts recommends that the existing laws of the Democratic Republic of the Congo, particularly the regulations governing natural resources and their orderly exploitation, be used as a baseline for a new sanctions regime. Violations of these laws would be considered sanctionable, and the Group of Experts, strengthened with appropriate legal expertise, would be mandated to investigate relevant acts. Violators could be added to the list of individuals and entities subject to the measures imposed by paragraphs 13 and 15 of Security Council resolution 1596 (2005). Since the core violation would be the infraction of current Congolese law, due process would be automatically built into the sanctions regime. Should the evidence against violators not prevail in orderly Congolese courts of laws, the listing under paragraphs 13 and 15 of resolution 1596 (2005) would be removed.**

53. In order for the Group of Experts to have appropriate legal input for its work, it would require the assistance of recognized scholars of Congolese and international law. Member States could grant assistance by drawing on their academic institutions or providing financial commitments in an amount sufficient to cover the costs of legal services providers. The new sanctions regime would be reviewed for possible renewal if, after one year, diversions of natural resources persisted and the State's ability to control them had not improved.

III. Monitoring of arms transfers, trafficking and smuggling

54. In spite of numerous allegations and rumours of arms embargo violations, no viable evidence has been found by the Group of Experts, nor has any been transmitted to the Group by its monitoring partners, to suggest that there have been recent illicit flows of arms or related material to armed groups operating in the Democratic Republic of the Congo.

A. Brokers' and manufacturers' input to embargo monitoring

55. The Group of Experts relies on numerous sources of information to fulfil its research and analysis role. The role aviation, cargo transport, mining and security companies has proven to be invaluable in this process. The defence industry, to date, has played a minimal role in providing advice, assistance or information to the Group of Experts. To remedy this, the Group has begun to invite more members of the defence industry to increase their input to its activities. It is hoped that the defence industry will take up this opportunity to assist in arms embargo monitoring. The Security Council Committee will be kept fully informed as this project progresses.

B. Legitimate transfers of arms and related materiel

56. Legitimate transfers of arms and related material to the Government of the Democratic Republic of the Congo are exempt from the arms embargo when those transfers (a) are in compliance with paragraph 2 (a) of Security Council resolution 1596 (2005); and (b) are made only to receiving sites as designated by the Government of National Unity and Transition, in coordination with MONUC, and notified in advance to the Security Council Committee in accordance with paragraph 4 of the same resolution. The complexities involved in monitoring and implementing a partial arms embargo of this nature have been evident during the current mandate of the Group of Experts.

57. Frequent deliveries to the Democratic Republic of the Congo of normally embargoed material are made under the provisions of paragraph 2 (a) of resolution 1596 (2005). Two transactions during the period under review were noteworthy for the lack of transparency concerning communications with those United Nations actors charged with monitoring the arms embargo. This opacity was avoidable and, as the deliveries arrived unannounced in the period between the two rounds of voting in the elections, further contributed to a situation of increased tension in Kinshasa.

Delivery of military material: Matadi port

On 26 July 2006, the cargo freighter *BBC Singapore* arrived at the port of Matadi with a cargo containing significant quantities of ammunition and armoured vehicles ordered by the Ministry of Defence of the Democratic Republic of the Congo from the Ukrainian State enterprise, Ukroboronservice. The Government of Ukraine informed the Security Council Committee of its export of this material in advance of its delivery, in accordance with the requirements of resolution 1596 (2005). MONUC was informed of the delivery in a letter from the Ministry of Defence of the Democratic Republic of the Congo received after the ship had already unloaded its cargo, and which only gave a partial account of the extent of the cargo. MONUC subsequently carried out two successful verification missions to the port of Matadi with the cooperation and assistance of relevant Congolese authorities.

58. Although MONUC was not informed of this delivery in advance, the Security Council Committee was informed that the transaction had been authorized. The role MONUC plays in arms embargo monitoring and its wider security responsibilities in the Democratic Republic of the Congo are well defined. This was a significant delivery of military materiel in terms of both size and cost, initially ordered in 2004, which had been travelling for 22 days before arriving in the country. Although MONUC reports that it has received good cooperation from the authorities of the Democratic Republic of the Congo during its verification missions, cooperation and information-sharing on arms imports can only be considered effective if they occur before a delivery reaches the territory of the Democratic Republic of the Congo.

Delivery of military materiel: N'Djili airport

On 29 August 2006, a delivery of 10,000 AK-47 magazines arrived at N'Djili airport, Kinshasa, from China North Industries Corporation. This cargo was carried by Ethiopian Airlines using airway bill No. 071-13271241 on flight number ET3825 from Beijing, via Addis Ababa to Kinshasa. The airway bill clearly stated the nature and content of the cargo.

From the point of arrival in the Democratic Republic of the Congo, multiple customs irregularities were incurred concerning this transaction. Irregularities in the customs declarations included a false declaration of the value of the goods. The stated customs value was $1.45 per magazine, as opposed to the $11.25 per unit paid.

Paperwork relating to this transaction states that $1,125,000 has been paid to an agent authorized by the Minister of Defence for the delivery of 100,000 magazines for FARDC via the designated entry point of Matadi port. To date, 10,000 magazines have been discovered at N'Djili airport and no information has been provided concerning further possible deliveries.

As notification of the Security Council Committee could not be substantiated to the Group of Experts for this transaction, the Group requested clarification from the Government of China. The Government of China confirmed that "this transaction had been examined and approved under strict process with all necessary documents, and is in conformity with the requirements of relevant Security Council resolutions".

Congolese authorities only informed MONUC of the delivery of the cargo to N'Djili airport after it had already arrived in Kinshasa and had been discovered by customs agents. At a later date, the Ministry of Defence provided the Group with documentation relevant to this transaction.

59. The Group of Experts is aware that in April 2006, the Government of the Democratic Republic of the Congo requested the Committee to add the cities of Boma and Uvira to the list of designated receiving sites. These additions were made without the necessary consultation with MONUC as required by paragraph 4 of resolution 1596 (2005). This lack of consultation continues to delay the designation of these cities as official receiving sites.

60. These examples are included in the present report in order to show the inherent complexity of monitoring arms deliveries to a territory such as the Democratic Republic of the Congo that is subject to a partial arms embargo. The number of deliveries carried out under the relevant exemptions is increasing and is predicted to further increase as a result of security sector reform initiatives and investment in FARDC. The complexity and inherent opacity should be remedied in order to prevent the sanctions monitoring mechanism from becoming overwhelmed with investigations into what later turn out to be legitimate transactions and so that cases of illicit arms shipments can be quickly and efficiently identified and appropriate action taken.

C. Recommendations

61. **The Group of Experts recommends that the Security Council Committee clarify the process to be followed for deliveries of arms and related materiel which are exempt from the arms embargo as follows:**

(a) **Specify that as part of its cooperation with MONUC, the Government of the Democratic Republic of the Congo should inform MONUC of deliveries of exempt materiel before such material arrives in the country in sufficient time (say, 10 days in advance) for MONUC to deploy a monitoring team to the receiving site if MONUC should decide that this course of action is necessary;**

(b) **Specify that the Government of the Democratic Republic of the Congo should include in its information sent to MONUC specific details on the deliveries, including point of entry, time of entry, means of delivery and accurate information on the content of the shipment;**

(c) Specify that the provisions of paragraph 4 of resolution 1596 (2005), concerning consultation between the Government of the Democratic Republic of the Congo and MONUC with respect to the designation of points of entry for exempted material, should be adhered to, and that this process should take into account the capacity of MONUC to access and effectively monitor any potential delivery to additional points of entry. New entry points should only be considered to be "designated" when input from MONUC has been taken into account and provided to the Committee;

(d) Reiterate the requirement for all Member States to inform the Committee in advance of their authorized exports of exempted material to the Democratic Republic of the Congo in accordance with paragraphs 2 (c) and 4 of resolution 1596 (2005);

(e) Specify that the Committee should be informed in detail by the exporting State of the delivery date, time, means of transport, contents of the shipment and entry point in the Democratic Republic of the Congo of exempted material in advance of its delivery and be kept up to date if these details change;

(f) Specify that the information requested in point (e) above be transmitted upon receipt via the Committee to MONUC and the Group of Experts in order to enable them to fulfil their monitoring mandates;

(g) Specify that if upon delivery the authorities of the Democratic Republic of the Congo discover discrepancies between what has been ordered and related to the sanctions monitoring mechanism, and what has been received, this information should be immediately transmitted to MONUC and the Committee.

IV. Other cases investigated

A. Antonov aircraft

62. Antonov aircraft which do not meet airworthiness criteria continue to operate in the Democratic Republic of the Congo.

63. The Group of Experts knows that the manufacturers Antonov have published a list of their aircraft which do not meet airworthiness criteria, to help civil aviation authorities ground the aircraft for retrofitting.

64. The International Civil Aviation Organization (ICAO) has assumed responsibility for the above-mentioned list published by Antonov and placed it on its site for the attention of contracting States, so that they can take the necessary measures pursuant to paragraph 4.2.1.1 of annex 8 to the Convention on International Civil Aviation (Chicago Convention).

65. The Group of Experts has brought the list published by Antonov and ICAO to the attention of the aviation authorities of the Democratic Republic of the Congo, Rwanda, Burundi and Uganda, who have undertaken to make every effort to implement the provisions of paragraph 6 of Security Council resolution 1596 (2005) and to convey all the requested information to the Group of Experts.

66. In its investigations, the Group of Experts ascertained that some aircraft being operated in the Democratic Republic of the Congo are using fake registration numbers, as they have been de-registered by their countries of registration.

67. In addition, by comparing the results of its investigations with the above-mentioned list, the Group of Experts found that some aircraft had changed operators since the list was drawn up.

68. Accordingly, the Group of Experts was able to establish that some aircraft are continuing to fly in the African Great Lakes area in defiance of international rules. Others appear to be using fake registration numbers. These aircraft could therefore be grounded and penalties imposed on the operating companies.

69. In this context, the Group of Experts is particularly interested in the case of Air Navette. This company, which has long been associated with illegal arms traffic and, in particular, assisting armed groups, uses one of the aircraft on the Antonov list, an An-12, registration 3C-AAG.

70. This Congolese-registered company, with its head offices in Kisangani, uses Entebbe as its base. There are discrepancies in its chain of ownership which the Group of Experts will endeavour to clear up before it completes its work.

71. The Group of Experts is continuing its investigations into this company so as to gain a better idea of its activities and to ascertain who its real owners are.

B. Follow-up to the recommendations by the Sanctions Committee

72. The Group of Experts notes that its recommendation pertaining to the training of inspectors in the transport of dangerous goods (including munitions) is being implemented. The ICAO regional office, working together with the United States Federal Aviation Administration, held a training workshop on this subject in Dakar from 12 to 20 September 2006. Officials from the Democratic Republic of the Congo attended the workshop. Other recommendations that fall under the responsibility of ICAO will be disseminated on the ICAO website for the attention of contracting States.

V. Children in armed conflict

73. By resolution 1698 (2006), the Security Council extended the option of applying financial and travel sanctions on political and military leaders recruiting or using children in armed conflict in violation of applicable international law, and individuals committing serious violations of international law involving the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement in the Democratic Republic of the Congo.

74. With the recent assistance of a specialist consultant, the Group of Experts has initiated a research project in this area. To date there is a lack of sufficient, independently verifiable evidence to recommend the individuals under investigation to the 1533 (2004) Committee for consideration for sanctions. It is intended that when these cases are sufficiently supported they will be submitted to the Committee.

VI. Cooperation by States Members with the Group of Experts

75. During its work, the Group of Experts made constant efforts to strengthen its cooperation with the Democratic Republic of the Congo and the neighbouring countries. It should be noted that, during this first part of its mandate, cooperation by the Congolese authorities was not at the level which the Group hoped to receive.

76. For their part, the Rwandese authorities rendered assistance to the Group during its visit to Kigali.

77. Where Uganda is concerned, the Group still had problems visiting the arms factory in Nakasongola, notwithstanding the official invitation extended by Uganda to the Chair of the Sanctions Committee. The Group has briefed the Chair of the Committee on this matter.

78. The Committee received an invitation from President Yoweri Museveni, offering to meet the Group of Experts on 25 October 2006, but by that date the Group had already left the region. The Group stands ready to return to Uganda, to visit the Nakasongola factory.

79. In its investigations, the Group of Experts sought assistance from Ukraine, represented by the Ukrainian civil aviation authorities and the Antonov Design Bureau, during a visit to Kyiv from 28 August to 1 September 2006. The information requested from these authorities by the Group has not yet been received.

80. Finally, the Group of Experts would like to draw the Committee's attention to the total lack of response from Equatorial Guinea, the Central African Republic, the Republic of the Congo and Sao Tome and Principe to requests from the experts to visit those countries to carry out its mandate.

Annex I

Sample geochemical analysis control system for minerals designed by Société Générale de Surveillance

Similar proposals exist for forestry control systems and auditing measures for the petroleum industry.

Step 1
Identify and "license" authorized producers in the Democratic Republic of the Congo

Identify and license the reputable producers in the Democratic Republic of the Congo. This will involve site inspections, a licensing system with marks/stamps/seals that can be used to identify shipments.

Step 2
Sample and analyse the products of the authorized producers to fingerprint them

This will require obtaining samples of the products from the authorized producers and having them fingerprinted analytically. Issues related to step 2 include the following:

(a) Illegal materials from the same ore bodies as the legal materials will likely not be able to be distinguished analytically;

(b) Ore bodies can change character with depth and horizontal expression. This will mean that the fingerprint will have to be confirmed/updated as mining progresses;

(c) Process variances in the concentration of copper and cobalt from legal producers may make their concentrates indistinguishable from illegal materials. A series of sampling and analytical studies in the legal producers' operations would be required to look for process variance and create a fingerprint range for these materials. Technology would be total acid digest Inductively Coupled Plasma-Mass Spectrometer (ICP-MS) with classical chemistry to confirm the major element concentration;

(d) The technology for gold and diamonds would have to be acquired from specialized mining companies, the Royal Canadian Mounted Police or other police agencies around the world. This would involve ICP-MS laser ablation for the gold and probably non-destructive Fourier Transform InfraRed for diamonds. The best solution may be the bio/enzyme marking technology that has been trialed to confirm shipment lot identities. As part of the control system, a secret bio/enzyme marker would be applied to each parcel of diamonds/gold leaving a site. This parcel could be then assaying/confirming the marker as the parcel moves. Secrecy is critical in this situation;

(e) The fingerprinting and monitoring laboratory supervising the implementation of the control system would be a very specialized one headed by a senior accredited forensic scientist. The laboratory would have to be accredited to an appropriate forensic designation and be recognized by police agencies.

Step 3
Approval of export for product verification and shipments out of the Democratic Republic of the Congo

Sampling and analysis. Samples would be taken from each shipment at appropriate points, leaving the producer site at the point of export from the Democratic Republic of the Congo. Samples would be taken under supervision, prior to container sealing, and sent to the fingerprint laboratory for analysis. If material matches the site "fingerprint" the material would be cleared for export. Samples collected at the final point of export should match the site "fingerprint" for the material to leave the Democratic Republic of the Congo for its final destination.

Paperwork checks, weight checks, seal checks and analytical checks would all be part of the approval of the export process.

Annex II

Entities and organizations contacted by the Group of Experts

For security reasons certain individuals who have provided information or statements to the Group of Experts cannot be listed.

Australia

Private sector: Moto Goldmines Ltd., BHP Billiton Limited, Anvil Mining, Gravity Diamonds, Council for Responsible Jewellery Practices, Ltd.

Belgium

Government: Ministry of Foreign Affairs, Federal Police

Organization: International Crisis Group

Burundi

Government: Ministry of External Relations and International Cooperation, Immigration Police, Régie des Services Aéronautiques, Customs Authority

Organization: United Nations Office in Burundi

Democratic Republic of the Congo

Government: President's Office, Delegation Générale du Gouvernment chargée de liaison avec la MONUC, Ministry of Mines, Ministry of Finance, Ministry of Energy, Civil Aviation Authority, Régie des Voies Aériennes, Commission for Reconstruction and Development, Ministry of Internal Security, Ministry of Defence, Ministry of Foreign Affairs, Lubumbashi International Airport, Administration of Province Orientale, Office of the Special Adviser to the President, Mining Cadastre, Customs and Excise Office

Organizations: United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), European Union security mission (EUSEC), Peacekeeping Force of the European Union (EUFOR), Pact-Congo, United States Agency for International Development, European Union

Diplomatic missions: African Union, Belgium, Czech Republic, China, European Union, France, Russian Federation, South Africa, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America

Private sector: George Forrest International Afrique, Chemaf sprl, MIBA, Gécamines, Safricas, Okimo, Service Air, Sonas

Canada

Government: Ministry of Foreign Affairs, Royal Canadian Mounted Police

Private sector: Banro, BRC Diamond Corporation

France

Government: Ministry of Foreign Affairs

Organization: Financial Action Task Force, Regional office of the International Civil Aviation Organization (ICAO)

Germany

Government: Ministry for Economic Cooperation and Development

Private sector: Danzer Ag, Heraeus Holding

Israel

Private sector: DGI Group of Companies

Rwanda

Government: Special Representatives of the Office of the President, Ministry of Foreign Affairs, Civil Aviation Authority, Customs and Immigration Office, Ministry of Internal Affairs

Organization: MONUC

Diplomatic missions: France, Germany, United Kingdom, United States

Private sector: Mining Processing Congo

Switzerland

Private sector: Société Générale de Surveillance SA, Argor-Heraeus

Senegal

Organization: ICAO, Agence pour la sécurité de la navigation aérienne en Afrique et à Madagascar

South Africa

Government: Ministry of Foreign Affairs

Organization: Institute for Security Studies

Private sector: AngloGold Ashanti, De Beers, Metorex Limited, SouthernEra Diamonds Inc., Mineral Processing Associates, Rand Refineries, Niko Shefer

Uganda

Government: Ministry of Foreign Affairs, Civil Aviation Authority, Customs Authority, Immigration Authority, Police

Organization: MONUC

Diplomatic missions: Belgium, France, United Kingdom, United States

Ukraine

Government: Ministry of Foreign Affairs, State Administration of Ukraine for Aviation Safety Oversight

Private sector: Antonov Design Bureau

United Arab Emirates

Private sector: Dubai Multi Commodities Centre

United Republic of Tanzania

Government: Civil Aviation Authority, Customs Office

United Kingdom of Great Britain and Northern Ireland

Government: Ministry of Foreign Affairs, Department for International Development, All Party Parliamentary Group on the Great Lakes Region

Organizations: Extractive Industry Transparency Initiative, International Alert

Private sector: Anglo American, Central African Mining & Exploration Company, First Quantum Minerals Ltd., Tullow Oil plc, Heritage Oil, A&M Group, Crown Agents, ICMM, Group 4 Securicor plc, ArmorGroup International plc

United States of America

Government: Department of the Treasury, Department of State

Organizations: Department of Political Affairs of the United Nations Secretariat, WWF International (Mining Certification Evaluation Project), World Bank

Private sector: Phelps Dodge, OM Group, Alex Stewart International, Kroll Corporation, Boeing Company